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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,379	02/19/2004	Roger Warren	486.0047USU	3589

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,379

Applicant(s)

WARREN ET AL.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment of 5-12-05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2-19-04 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The amendment dated 5-12-05 has been entered including the amendment to the specification and claims. Claims 1-6 and 8-18 remain in the application. Claim 7 has been canceled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6 and 8-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gluckin (US 5,154,659).

In regard to claim 1 Gluckin discloses a brassiere 60 with an inner transparent layer, lace 92, with an inner and outer surface; an outer support layer 78 with an inner and outer surface and a third intermediate fusing layer 80. The layers of Gluckin are seamless as broadly claimed. (See Gluckin, col. 3, line 39 – col. 4, line 4 and figures 5-11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659).

Gluckin discloses the brassiere with the inner layer as being transparent and the outer layer as being cotton. However, Gluckin does not specifically disclose the outer layer as being transparent. It is well known to use lace in brassiere construction in order to achieve a desired aesthetic effect and wherein such a selection is a mere selection of a material as a matter of design choice. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to use a transparent or lace cotton material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

Applicant's arguments filed 5-12-05 have been fully considered but they are not persuasive.

In response to Applicant's remarks on page 10 in regard to the material of Gluckin not being transparent, the Examiner respectfully disagrees.

The Webster's New World Dictionary, Third College Edition, Copyright 1988, page 1422 defines "transparent" as being "Capable of being seen through". The definition of "translucent" on page 1421 is "(2) transparent and (3) letting light pass but diffusing it so that objects on the other side cannot be clearly distinguished; partially transparent. "Lace" is defined on page 753 as being fine netting or open work fabric.

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Open work or net fabric can be seen through and is therefore transparent or translucent. In conclusion, Gluckin discloses the layer as being lace, which is transparent or translucent as defined by Webster's. It would also have been within the skill of one of ordinary skill in the art to use such materials especially since such materials are well known to be used in lingerie manufacturing. One of ordinary skill in the art knows that lace is transparent or translucent since it can be seen through and is an open work fabric. Therefore, since it is known, Gluckin does not need to specifically explain that lace is translucent or transparent as argued by applicant. Further it is well known in the lingerie construction business to use lace, transparent, translucent or sheer materials such as organza, voile and lace. It is within the general skill of a worker in the art to use such materials. The use of such material is not different from the prior art since Gluckin uses lace, which is translucent and transparent. The adhesive layer would be seen through Gluckin's open-work areas. Lace comes in many deniers, thickness etc. There are very sheer laces in the marketplace. One of ordinary skill in the art would know which lace to select to achieve a desired aesthetic effect. If one wants to see through the lace to view an underlayer or a wearer's skin they would select a more "see through" or thin lace or one with more open work areas. Gluckin includes "etc" and or "the like" after the listed materials. One of ordinary skill would know that lace is constructed of all known fibers used in lingerie such as polyester, nylon, rayon etc. Cotton is used to form lace, which is transparent. The fiber content does not limit the material from being transparent or used in lace. The thickness or denier of the yarn and the fabric construction is the key to transparency. In regard to the seamless layer

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construction on eof ordinary skill in the art would have the knowledge and skill to construct a pattern piece originally formed of two pieces as a single piece when having a blank large enough to obtain the piece as one piece instead of two. It is well known to construct formerly integral structure in various elements and vice versa wherein such a construction would involve only routine skill in the art. *Nerwin v Erlichman*, 168 USPQ 177,179. However the Gluckin blank is a single seamless piece. Used to form a breast cup. Applicant is arguing more that what has been claimed. The claim does not claim a blank formed into a dual brassiere cup structure. Therefore, applicant's arguments are not persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
Art Unit 3765
